

stated by Bailey himself that, when the metal parts are screwed together without leather washers, the space left for end play of the casing, between its stock and the bead on the body of the hydrant, is only 3-32 of an inch.

But, admitting that his testimony with regard to the patent-office model should be taken for all that can be claimed for it, there is nothing to show that Bailey did not secure to himself all of which he intended to claim the monopoly of manufacturing and using. His letters to his attorneys, Munn & Co., were also burned, and there is no attempt to show by parol the instructions contained in them. Bailey simply says that his recollection is that he wrote them about it, "giving them my idea of it sometime previous, I think a month, to the forwarding to them of the specifications." There is no evidence from the office of Munn & Co. as to what their instructions were, or whether the model sent to them contained the up-and-down movement or not. We can only say with respect to this branch of the case that, if the patentee intended to claim a loose casing around the hydrant, he would, in all probability, have so instructed his solicitors, and if he had done this, it is incredible that they should have so completely neglected his instructions in this important particular, and that when he signed the specifications he should have failed to notice the omission of the principal feature of his invention; and that he should have held possession of the patent for eight years without discovering the defect. He testifies that he read the specification which he executed and sent to Munn & Co., September 7, 1867, before he signed and swore to it; that he received his patent within two or three days after its issue upon March 10, 1868, and then read it, but did not examine the drawings, because he did not consider them an important part of his patent. It was not until eight years afterwards, when he saw hydrants made by the plaintiffs in use in Saginaw, that he recollected that his own device contained a perpendicular movement embodied in a subsequent patent granted to Race & Mathews.

There is also evidence that when Race & Mathews applied for their patent in December, 1868, they were informed by the examiner that a rejection was declared with reference to Bailey's hydrant, the model of which showed the whole invention of the loose casing claimed by Race & Mathews; but the examiner who wrote this letter is dead, and the letter itself is wholly inadmissible as evidence. The history of the reissue is substantially this: In 1875, Bailey being at Saginaw, Michigan, where hydrants made by the plaintiffs were in use, and learning that the city had been threatened with prosecution by R. D. Wood & Co., the present owners of the Race & Mathews' patent and the real defendants in this case, returned home and wrote to the plaintiffs that Mathews had no patent on a loose case, but that he (Bailey) had one patented in 1868, saying: "If you will look up this matter, and satisfy yourselves that my claim is good, I will sell

to you, or go in with you to make Mr. Mathews stop his noise." Soon after, at their request, he sent his patent to the plaintiffs, who submitted it to their counsel in Cleveland, Messrs. Leggett & Co. These gentlemen, seeing the defect in the specifications and drawing, wrote to the patent-office, and upon receiving a reply advised and obtained a reissue, with new specifications and drawing. The patentee (Bailey) seems to have had nothing to do with the matter of procuring the reissue, beyond signing and swearing to the application after it had been prepared and sent to him for that purpose by the attorneys who were acting for the plaintiffs.

In the mean time, and before this reissue was obtained, a loose casing similar to the casing, C, described in the reissue, had gone into extensive use throughout the country. In the year 1867, and more than six months before Bailey filed his application for the original patent, the Niagara Manufacturing Company, of Lockport, New York, was engaged in manufacturing and selling hydrants provided with an outside casing having an end play, and apparently embracing the very invention claimed in the reissue. This company, it appears from its books, sold, during the year 1867, 516 hydrants embodying this device, and of these 367 were sold before the date of Bailey's application. In the summer of 1868 the company failed, and for about a year thereafter the business was carried on in their shop by one of their creditors, and again for about a year longer by Samuel R. C. Mathews in the city of Lockport, making in all four years of such manufacture up to the spring of 1870. Meantime, in November, 1869, Race & Mathews obtained a patent for an improvement in hydrants, which embraced the same invention of an outside case with an end play; and, from the spring of 1870 down to this time, the manufacture of such hydrants has been carried on by Mathews, in copartnership with R. D. Wood & Co., at Philadelphia. Some eight or nine thousand of these hydrants were manufactured by them up to the date of the reissue of the Bailey patent, and since then, up to the beginning of this suit, about twelve or fourteen thousand more. In November, 1867, Bailey obtained permission from the common council of the city of Lockport to put in one of his new patent hydrants, which was subsequently taken up. Between this time and August 16, 1869, four or five more of these hydrants were made by Bailey, and these, with the one first mentioned, were all which were ever manufactured by him, or by any one with whom he has been connected in business.

Under all the circumstances of this case, and conceding that Bailey was the first inventor of the loose casing which is the main subject of this suit, it seems to us that his omission for this period of eight years to obtain a correction of his patent operated as a dedication to the public of all which was not claimed in the original. It would ill become a court of equity to incline its ear to the prayer of one who has been guilty of such gross laches, and is now seeking

to set up a practically abandoned claim to the prejudice of others, who, deceived by his silence and apparent acquiescence, have introduced his device into many of the leading cities of the country.

The language of Mr. Justice BRADLEY in delivering the opinion of the supreme court in *Miller v. Brass Co.* 104 U. S. 350, is exactly pertinent to this case:

“But it must be remembered that the claim of a specific device or combination, and an omission to claim other devices or combinations apparent on the face of the patent, are, in law, a dedication to the public of that which is not claimed. It is a declaration that that which is not claimed is either not the patentee's invention, or, if his, he dedicates it to the public. The legal effect of a patent cannot be revoked unless the patentee surrenders it and proves that the specification was framed by real inadvertence, accident, or mistake, without any fraudulent or deceptive intention on his part; and this should be done with all due diligence and speed. \* \* \* It will not do for the patentee to wait until other inventors have produced new forms of improvement, and then with a new light thus acquired, under pretense of inadvertence and mistake, apply for such an enlargement of his claim as to make it embrace these new forms.”

If this language may be used with references to devices or combinations apparent upon the face of the patent, with much greater force may it be applied to a claim which was not even suggested in the original patent or in the drawing annexed thereto, and was only shown by a model preserved in the archives of the patent-office, the existence of which could only be learned by a search instituted for that purpose.

The third claim of the reissue only remains to be considered. This is for a “combination of the hydrant or fire-plug pipe, A, supply-pipe, B, valve, D, casing, C, and stuffing box, H, substantially as and for the purpose shown.” It is substantially a restatement, in somewhat more specific language, of the second claim of the original patent. We have already expressed the opinion that the invention claimed in the original patent was that of a cylinder valve operating in a suitable case, in connection with a waste-water valve. If this be the proper construction, then defendants are not guilty of an infringement, inasmuch as they make use of a puppet valve in place of the cylinder valve, B, unless the puppet valve can be treated as the equivalent of the cylinder valve. But if the two valves be treated as equivalents for each other, (and we are inclined to think they ought to be,) then the combination is destitute of novelty, for in all the hydrants exhibited there is an upright stock, A, hydrant tube, B, a horizontal section, B, a valve for turning off and on the water, a stuffing box, H, and a loose casing for protecting the hydrant from the surrounding earth. In the New York hydrant it is a mere wooden box covering the entire hydrant. In the Race & Mathews patent of 1858 it is a tube loosely inclosing the hydrant tube, but held at the top by an overlapping flange. In view of the opinion we have already expressed regarding the first claim, we think the patentee